

A bill (S. 2645) to provide for the application of certain measures to the People's Republic of China in response to the illegal sale, transfer, or misuse of certain controlled goods, services, or technology, and for other purposes.

A bill (H.R. 3244) to combat trafficking of persons, especially into sex trade, slavery, and slavery-like conditions in the United States and countries around the world through prevention, through prosecution and enforcement against the traffickers, and through protection and assistance to victims of trafficking.

Mr. CRAIG. Mr. President, I object to further proceeding on these bills at this time.

The PRESIDING OFFICER. Under the rule, the bills will be placed on the calendar.

The Senator from South Carolina is recognized.

(The remarks of Mr. THURMOND and Mr. DURBIN pertaining to the introduction of S.J. Res. 46 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolution.")

The PRESIDING OFFICER. Under the previous order, the time until 11 a.m. is under the control of the Senator from Illinois, Mr. DURBIN, or his designee.

Mr. GREGG addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. GREGG. Mr. President, I ask unanimous consent that at 12 o'clock I be allowed to speak for 15 minutes in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, I ask unanimous consent that the time between 12:15 and 12:30 be reserved for myself.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, I yield to the Senator from Wisconsin.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Thank you, Mr. President. I thank the Senator from Illinois.

#### THE NEED FOR A MORATORIUM ON EXECUTIONS

Mr. FEINGOLD. Mr. President, the Federal Government has not executed a person in the name of people of the United States of America since 1963. For 37 years, we as a people have not taken that fateful, irreversible step. I rise today because all that is apparently about to change.

Since January, I have come to the Senate floor several times to urge my colleagues to support a moratorium on executions and a review of the administration of capital punishment. Mr. President, the need for that moratorium has now become more urgent.

During the Senate recess just ended, a Federal judge in Texas set a date for the execution of Juan Raul Garza. In only two months, on August 5, he could become the first prisoner that the Federal Government has put to death since 1963.

In the early hours of a Saturday morning, when most Americans will be sleeping, Federal authorities will strap Mr. Garza to a gurney at a new Federal facility in Terre Haute, Indiana. They will put the needle in his vein. And they will deliver an injection that will kill him.

Mr. President, I rise today to invite my colleagues to consider the wisdom of this action.

More and more Americans, including prosecutors, police, and those fighting on the front lines of the battle against crime, are rethinking the fairness, the efficacy, and the freedom from error of the death penalty. Senator LEAHY, a former federal prosecutor, has introduced the Innocence Protection Act, of which I am proud to be a cosponsor. Congressman DELAHUNT and Congressman LAHOOD have introduced the same bill in the House. Congressman DELAHUNT, also a former prosecutor, is concerned that our current system of administering the death penalty is far from just. He has said: "If you spent 20 years in the criminal justice system, you would be very concerned about what goes on."

In my own home state of Wisconsin, at least eleven active and former state and Federal prosecutors have said that executions do not deter crime and could result in executing the innocent. Michael McCann, the well-respected District Attorney of Milwaukee County, has said that prosecution is a human enterprise bound to have mistakes.

Mr. President, police—the people on the front lines of the battle against crime—are coming out against the death penalty. They are finding that it is bad for law enforcement. Recently, when police chiefs were asked about the death penalty, they said that it was counterproductive. Capital cases are incredibly resource-intensive. They do not yield a reduction in crime proportional to other, more moderate law-enforcement activities.

A former police chief of Madison, Wisconsin, for example, has said that he fears that the death penalty would make police officers' jobs more dangerous, not less so. He expressed concern that a suspect's incentive to surrender peacefully is diminished when the government has plans to execute.

Ours is a system of justice founded on fairness and due process. The Framers of our democracy had a healthy distrust for the power of the state when arrayed against the individual. Many of the lawyers in the early United States of America had on their shelf a copy of William Blackstone's Commentaries on the Laws of England, where it is written: "For the law holds, that it is better that ten guilty persons escape, than that one innocent suffer." And Benjamin Franklin wrote, "That it is better 100 guilty Persons should escape than that one innocent Person should suffer. . . ."

Our Constitution and Bill of Rights reflect this concern for the protection

of the individual against the might of the state. The fourth amendment protects: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. . . ." The fifth amendment protects against being "deprived of life, liberty, or property, without due process of law. . . ." The sixth amendment guarantees that "the accused shall enjoy the right . . . to have the assistance of counsel for his defense." And the eighth amendment prohibits "cruel and unusual punishments."

Our system of government is deeply grounded in the defense of the individual against the power of the government. Our Nation has a proud tradition of safeguarding the rights of its citizens.

But more and more, we are finding that when a person's very life is at stake, our system of justice is failing to live up to the standards that the American people demand and expect. More and more, Americans are finding reason to believe that we have a justice system that can, and does, make mistakes.

Americans' sense of justice demands that if new evidence becomes available that could shed light on the guilt or innocence of a defendant, then the defendant should be given the opportunity to present it. Unfortunately, apparently, the people of New York and Illinois are the only ones who understand this. They have enacted laws allowing convicted offenders access to the biological evidence used at trial and modern DNA testing.

If you are on death row in a state other than Illinois or New York, you might be able to show a court evidence of your guilt or innocence based on new DNA tests. But your ability to do so rests on whether you're lucky enough to get a prosecutor to agree to the test or convince a court that it should be done. Or, as we have seen very recently, your ability to show your innocence may rest with the decision of the governor. And that raises the risk of a political decision, not necessarily one that is based solely on fairness or justice.

Mr. President, I am not surprised that both Texas Governor George Bush and Virginia Governor James Gilmore are no longer confident that every prisoner on death row in their states is guilty and has had full access to the courts. Allowing death row inmates the benefit of a modern DNA test is the fair and just thing to do. But scores of other death row inmates, in Texas, in Virginia, and around the country, may also have evidence exonerating them. They may have DNA evidence. Or they may have other exonerating evidence. We must ensure that all inmates with meritorious claims of innocence have their day in court. But, among problems in our criminal justice system, the lack of full access to DNA testing is, unfortunately, just the tip of the iceberg.

Americans' sense of justice demands fair representation and adequate counsel. In the landmark 1963 case of *Gideon v. Wainwright*, the Supreme Court held that "in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him." The Court in *Gideon* wrote:

From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.

And, in cases since then, for example the 1988 case of *McCoy v. Court of Appeals*, the Supreme Court has ruled that: "It is . . . settled law that an indigent defendant has the same right to effective representation by an active advocate as a defendant who can afford to retain counsel of his or her choice."

But, Mr. President, more and more, we are finding counsel that fail the standard of adequacy. Drunk lawyers. Sleeping lawyers. Lawyers who never cross-examined. Lawyers whose first trial is a trial where the client's life is on the line. Lawyers who have been subsequently disbarred.

We would never allow a podiatrist to perform heart surgery. And we would never allow a surgeon to perform surgery while drunk, or to fall asleep during surgery. But courts, over and over again, have upheld convictions where the defendants' lawyers were not qualified to represent them, slept through trial, or were drunk in court.

Take the case of the lawyer Joe Cannon. In 1979, one Mr. Carl Johnson was convicted of murder and sent to death row by a Texas state court. During trial, his lead counsel, Joe Cannon, was often asleep. Cannon's co-counsel, Philip Scardino, was two years out of law school and recalls the whole experience as "frightening." He said, "All I could do was nudge him sometimes and try to wake him up." Johnson's appellate attorney, David Dow, said the trial transcript gives the impression that there was no one in the courtroom defending Johnson. It "goes on for pages and pages, and there is not a whisper from anyone representing him." Mr. Johnson was executed in 1995, the 12th execution under Governor Bush's watch.

Now as "frightening" as this sounds, the same attorney continued to work capital cases.

Like the majority of inmates on Texas' death row, Calvin Burdine could not afford an attorney, so the court paid a lawyer to represent him, and that lawyer again was Joe Cannon. Five years after Johnson's trial, and this time without co-counsel, Cannon represented Burdine, and again slept through crucial moments of the trial. The clerk for the trial judge said Cannon "was asleep for long periods of time during the questioning of wit-

nesses." Three jurors noted he did most of his nodding off in the afternoon, following lunch. Burdine's appellate attorneys contend that highly incriminating hearsay testimony was introduced and reached the jury because the attorney was sleeping. In 1995, the Texas Court of Criminal Appeals rejected his claim of ineffective assistance. Burdine's case is now before the U.S. Court of Appeals for the Fifth Circuit.

As Texas State Senator Rodney Ellis said of the Burdine case on ABC's *This Week* this past Sunday, "That is a national embarrassment." Incredulously, Senator Ellis lamented: "[T]he Texas Court of Criminal Appeals ruled apparently that you can be Rip Van Winkle and still be a pretty good attorney."

Two years after his death, lawyer Joe Cannon remains a courthouse legend. In a span of about 10 years, twelve of his indigent clients went to death row.

Americans' sense of justice demands that the poor, as well as the rich, should get their day in court. Even death penalty supporters like Reverend Pat Robertson recognize that this ultimate punishment appears reserved for the poor.

The machinery of death is badly broken. Since the 1970s, 87 people sitting on death row were later proven innocent. That means that for every seven executions, we've found one person innocent. But remember, this is after they were on death row. Eight of the 87 people later proven innocent relied on modern DNA testing to prove their innocence. But access to DNA testing plainly tells only a small part of the story of the mistakes in our criminal justice system. The remaining 79 innocent people gained their release based on other kinds of evidence—evidence like recanted witness testimony.

Sometimes, it is evidence that an ineffective attorney fails to introduce at trial. Take the case of Gregory Wilhoit. In 1987, an Oklahoma court sentenced Wilhoit to die for the murder of his estranged wife. The key evidence for the prosecution was expert testimony that a bite mark on the victim matched Wilhoit's. The defense never called an expert to challenge the prosecution's dental expert. The court of appeals granted a new trial, recognizing that Wilhoit had ineffective legal representation. The appellate court noted that his counsel was "suffering from alcohol dependence and abuse, and brain damage during his representation." Wilhoit describes his former attorney as "a drunk" and recalls several occasions when the attorney threw up in the judge's chambers. After spending six years on death row, Wilhoit was exonerated after 11 experts—11 experts—testified that the teeth marks did not match.

Mr. President, I hate to say it, but this is the worst of government gone amok. People understand that the government can make mistakes in other areas. They can only expect as much here. Columnist George Will recently

wrote that conservatives, especially, should be concerned. George Will wrote: "Capital punishment, like the rest of the criminal justice system, is a government program, so skepticism is in order."

When we do not exercise that skepticism, when we rush to execute with ever growing speed, we contribute to, rather than detract from, a culture of violence. It deprives us of the greatness that is America. We are better than this.

And so, Mr. President, the time has come to pause. That is why today, in the light of the scheduling of the first Federal execution in almost 40 years, and in light of the growing awareness that there are fundamental flaws in our system of justice, I urge my Colleagues to join me in the National Death Penalty Moratorium Act, which I introduced along with Senators LEVIN and WELLSTONE.

This bill is a common sense, modest proposal. It merely calls a temporary halt to executions while a national, blue ribbon commission thoroughly examines the administration of capital punishment. The bill simply calls for a pause and a study. That is not too much to ask, when the lives of innocent people hang in the balance.

When an airplane careens off a runway, the Federal government steps in to review what went wrong. This Nation's system of capital punishment has veered seriously off-course. It is now clear that it is replete with errors.

The time has come to pause and study what is wrong. The time has come to pause and ensure that our system is fair and just.

Our American tradition of fairness and due process demands it. Reverence for our democracy's protection of the individual against the state compels as much. The American people's love of justice deserves no less.

Mr. DURBIN. Mr. President, I commend my colleague from the State of Wisconsin. He is a person of principle. He comes to the floor of the Senate and reminds Members, whether in support of or in opposition to the death penalty, it is fundamental to the American system of justice that we insist on fairness.

In my State of Illinois, some 13 people who were on death row preparing to be executed by the State of Illinois were found by scientific testing to be innocent and were released. Because of that, the Governor of our State, a Republican, George Ryan, made what I consider to be an important and courageous decision. He suspended the death penalty in my home State of Illinois.

The Senator from Wisconsin, Mr. FEINGOLD, reminds Members that the experience in Illinois is not unique. In State after State, we have found people who have been called to justice and have received virtually no representation before the court of law. In the most serious possible cases under our system of justice, these men have been sentenced to death. In many cases,

that sentence was carried out with inadequate defense and representation.

For example, I think the decision by Governor Bush of Texas to at least suspend the execution of an individual for 30 days while DNA testing is underway is a thoughtful decision. I commend him for that. The State of Texas, I believe, leads the Nation in the number of executions, and the State of Texas has no public defender system. So in the State of Texas, if you are a criminal defendant facing a capital crime which could result in execution, it is literally a gamble, a crapshoot as to the person who will represent you to defend your life.

In cases that have been cited by Senator FEINGOLD, some of the most incompetent attorneys in America have been assigned this responsibility. In our State of Illinois, we found these attorneys to be not well versed in law; we found them to be lazy; we found them to be derelict in their duty, and in some cases, a person's life was at stake.

Again, I commend my colleague from the State of Wisconsin for his statement. It is a reminder to all, whether we support the death penalty—as I do—or we oppose it, that we in this country believe in a system that is based on fairness and justice.

I have introduced legislation to give to all Federal prisoners who were subjected to capital punishment the same right for DNA testing that exists in my State of Illinois. There are similar bills introduced by my colleagues. I hope that all, conservative and liberals alike, Democrats and Republicans, will at least adhere to the basic standard of justice when it comes to cases of this seriousness and this magnitude.

Mr. FEINGOLD. Will the Senator yield?

Mr. DURBIN. I am happy to yield to the Senator.

Mr. FEINGOLD. I thank the Senator and take my hat off to him and to our neighbor to the south, the State of Illinois. Without the leadership of Illinois, which had the courage to admit that it had a problem, this entire issue would not be receiving the kind of examination occurring across the country. That is to the Senator's credit, to that of the Governor, and to all the people of your State.

The bill I have introduced is modeled exactly after the pattern followed in Illinois; that is, the calling of a moratorium by a Governor who is, or at least has been, a death penalty supporter, and then the appointing of a very distinguished blue-ribbon commission, including our former wonderful colleague, Paul Simon, and including both pro- and anti-death penalty people.

Under Illinois' leadership, there will be this kind of pause and examination that is open to people of any view on the death penalty, to simply make sure that system is fixed.

As the Senator pointed out, Illinois could not possibly be the only State that has this problem. In fact, I predict

it will not turn out to be the one with the worst problem in this area.

The other States need to join it on this, the Federal Government needs to join, and I compliment your State, as I did in my earlier remarks, as being one of the only two States to recognize the right to have guaranteed DNA testing.

#### LEGISLATIVE AGENDA

Mr. DURBIN. Mr. President, in the time that remains in morning business, which I will share with my colleague from California, we will address several of the issues which still remain before this session of Congress. Many of us are just returning from a Memorial Day break which we spent with our families back in our States, trying to acquaint ourselves with the concerns of people and the concerns about issues we face here in Washington.

One of the concerns in the State of Illinois and in the city of Chicago continues to be gun violence. This is still a phenomenon which is almost uniquely American and which is tragic in its proportion. To think we lose 12 or 13 children every day to gun violence, that is a sad reminder of what happened at Columbine High School in Littleton, CO, a little over a year ago, when some 13 students were killed at that school. It is merely one instance of a situation which repeats itself every single day.

It has been more than a year since that tragedy, but still this Congress refuses to act on sensible gun safety legislation. I remind those who are following this debate, the proposal for this gun safety legislation is hardly radical. If people are going to buy a gun from a gun dealer in America, they are subjected to a background check. We want to know if they are criminals. We want to know if they have a history of violent crime or violent mental illness or if they are too young to buy a gun—basic questions. I understand that, as of last year, over 250,000 would-be purchasers of guns were denied that opportunity as a result of a simple background check.

Did they turn around and buy a gun on the street? It is possible. But we should not make it easy for them. It should not be automatic. In fact, I hope in many instances, having been denied at a gun dealer, they could not find a gun nor should they have been able to. We believe applying the same standard of gun safety legislation to gun shows just makes common sense.

So that is part of the gun safety legislation we passed in the Senate by a vote of 49-49, and a tie-breaking vote was cast by Vice President AL GORE. That bill left the Senate over 8 months ago, went over to the House of Representatives where it was emasculated by the gun lobby, where the National Rifle Association would not accept the basic idea that we should check on the backgrounds of people who buy guns at gun shows.

The National Rifle Association believes those who go into gun shows

should be able to buy a gun with no questions asked. That is just fundamentally unfair and ignorant. That position prevailed in the House of Representatives. The matter went to a conference committee where it has languished ever since.

Since Columbine High School, thousands of Americans have been killed by gunfire. Until we act, Democrats in the Senate will, each day, read the names of some, just some, who lost their lives to gun violence in the past year and will continue to do so every day the Senate is in session.

In the names of those who died, we will continue this fight, and in the names of their families who still grieve their losses, we will continue to remember these victims of gun violence.

Following are the names of some of the people who were killed by gunfire 1 year ago today, on June 6, 1999, at a time after the Senate passed gun safety legislation:

Earnest Barnes, 38, Atlanta, GA; Quentin A. Brown, 29, Chicago, IL; Dexter J. Caruthers, 46, Gary, IN; George Cook, 19, Minneapolis, MN; Don Ferguson, 80, Oakland, CA; Juan J. Gonzales, 28, Oklahoma City, OK; Mark S. Hansher, 33, Madison, WI; Joseph Jainski, 34, Philadelphia, PA; Maurice Lewis, 29, Philadelphia, PA; Donald Norrod, 67, Akron, OH; Allen Ringgold, 23, Baltimore, MD; Lawanza Robertson, 18, Detroit, MI; Agapito Rodriguez, 32, Dallas, TX; Jonathan Shields, 31, Washington, DC; Clarence Veasley, 44, St. Louis, MO; Kirk Watkins, Detroit, MI.

In addition, since the Senate was not in session this year from May 26 to June 5, I ask unanimous consent the names be printed in the RECORD of some of those who were killed by gunfire last year on the days from May 26 through June 5:

There being no objection, the material was ordered to be printed in the RECORD, as follows:

MAY 26, 1999

Demarcus Clark, 22, Atlanta, GA.  
Delmar Guyton, 23, Detroit, MI.  
Shawn Timothy Hamilton, 35, Washington, DC.

James Johnson, 24, Denver, CO.  
William Partlow, 26, Charlotte, NC.  
Shayne Worcester, San Francisco, CA.

MAY 27, 1999

Steve T. Fleming, 27, New Orleans, LA.  
Bruce Harvard, 19, Pittsburgh, PA.  
Kewan McKinnie, 19, Detroit, MI.  
Victoria Moore, 41, San Antonio, TX.  
Bobby Piggie, 39, Kansas City, MO.  
Ramona Richins, 47, Salt Lake City, UT.  
Kevin Sellers, 25, Baltimore, MD.  
Termell Wollen, 31, Detroit, MI.  
Unidentified male, 24, Norfolk, VA.  
Unidentified male, 25, Norfolk, VA.

MAY 28, 1999

Raymond Adams, 30, Philadelphia, PA.  
Carrillo Ambrocio, 32, Houston, TX.  
Luz Balbona, 59, Miami-Dade County, FL.  
Jimmy Cottingham, 30, Washington, DC.  
Armando Garcia, 16, San Bernardino, CA.  
Ignacio Gonzalez, Sr., 42, Chicago, IL.  
Terrell Hatfield, 21, Seattle, WA.  
Donnell Holmes, 25, Miami-Dade County, FL.